as the onus of proving his guilt lies throughout on the prosecution. If upon the whole evidence you are left in a real state of doubt, the prosecution has failed to satisfy the onus of proof which lies upon it.

The position may be conveniently stated as follows:—

(a) If you are satisfied beyond reasonable doubt as to the accused's guilt	Convict.
(b) If you accept or believe the accused's explanation ..	Acquit.
(c) If you do not accept or believe the accused's explanation ..	Do not convict but consider the next steps below.
(d) If you do not accept or believe the accused's explanation and that explanation does not raise in your mind a reasonable doubt as to his guilt	Convict.
(e) If you do not accept or believe the accused's explanation but nevertheless it raises in your mind a reasonable doubt as to his guilt ..	Acquit.

Magistrates would assist the appellate court if they indicate in their grounds that they are aware of the tests laid down in steps (d) and (e) above.

Appeal allowed.

PUBLIC PROSECUTOR v. NGIAO NAM KHIN & ANOR.

[A.Cr.J. (Suffian J.) April 27, 1963]

[Alor Star — Kedah Criminal Appeal No. 5 of 1963]

Gaming—Public Lottery—Assisting in carrying on —Common Gaming Houses Ordinance, 1953, s.4(1)(c)— Characters lotteries—Possession of documents relating to lottery.

Criminal Evidence—Expert witness—Descripiton of modus operandi—Duty of prosecution.

Where the Magistrate requires the descriptions by expert witness of the *modus operandi* of the characters lottery for his own enlightenment then it is the duty of the prosecution to supply them and if they fail to do so they cannot complain if the Magistrate acquits.

Before the expert witness had concluded his evidence the prosecution officer should have asked the Magistrate whether he was satisfied or required further explanation and then if the Magistrate required further explanation, the prosecution officer should have asked the expert the necessary questions to elicit the further explanation required by the Magistrate.

Cases referred to:—

(1) *Lee Seow* v. *Public Prosecutor* [1958] M.L.J. 245.

(2) *Choo See Kean & Ors.* v. *Public Prosecutor* [1959] M.L.J. 213.

MAGISTRATE'S CRIMINAL APPEAL.

Hamzah bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

Lee Saik Kee for the 1st respondent.

G. N. Christie for the 2nd respondent.

Cur. Adv. Vult.

Suffian J.: In this case the two respondents were charged with assisting in carrying on a public lottery contrary to section 4(1)(c) of the Common Gaming Houses Ordinance No. 26 of 1953. The prosecution alleged that the lotteries concerned were 100, 1000 and 10,000 character lotteries. They proved that the respondents had been found in possession of certain documents (exhibits P1, P3, P4 and P6). If these documents were a "record of stakes or wagers in or relating to a lottery", then by virtue of section 11 of the Ordinance the respondents "shall be presumed until the contrary is proved to be assisting in a public lottery then in progress." So the prosecution called an expert witness PW9 who said in effect that the documents were records of stakes or wagers in 100, 1,000 and 10,000 character lotteries. He described them briefly, but he did not say why he thought they were records of stakes or wagers in those lotteries, nor did he describe how these lotteries were run. On this evidence the learned Magistrate could not say that they were records of stakes or wagers in or relating to a lottery, and there being no other evidence he acquitted and discharged the respondents without calling upon them to enter on their defence.

I am of the opinion that this appeal by the Public Prosecutor should be dismissed. While it is true that a characters lottery constitutes a lottery within the meaning of the Ordinance, and summary courts have for their guidance descriptions of the operation of these lotteries in a judgment of the full Court of Appeal in *Lee Seow* v. *Public Prosecutor*(1) and therefore descriptions by expert witnesses of the *modus operandi* of the characters lottery are no longer necessary, this is so only where the Magistrate does not require such evidence for his own further enlightenment, *Choo See Kean & Others* v. *Public Prosecutor*(2). Where the Magistrate as here requires such descriptions for his own enlightenment then it is the duty of the prosecution to supply them and if they fail to do so they cannot complain if the Magistrate acquits. Some Magistrates in some areas know all that there is to know about character lotteries, but there are some Magistrates who are unfamiliar with their operation.

I have myself examined the documents exhibited in this appeal and I find that they are only lists of figures. They are not necessarily

a record of stakes or wagers in or relating to a lottery.

The learned Deputy submits that if the learned Magistrate did not understand the nature of these documents he should have asked for the necessary explanation from the expert witness. I do not think that this is a fair way of stating the position. Before the expert had concluded his evidence the prosecution officer should have asked the learned Magistrate whether he was satisfied or required further explanation and then, if the learned Magistrate required further explanation, the prosecution officer should have asked the expert the necessary questions to elicit the further explanation required by the learned Magistrate. But this was not done.

Appeal dismissed.

Solicitors:—*Pillai, Lim, Lee & Hwang; G. Naughton Christie.*

TENG SER SIONG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) May 7, 1963]

[K.L. — F.M. Criminal Appeal No. 10 of 1963]

Criminal Law—Murder—Conspiracy to rob—Fatal stabbing during robbery—Denial by accused of knowledge of knife in possession of person who stabbed—Accomplice evidence of such knowledge—Whether safe to convict on such evidence—Corroboration of accomplice evidence—Whether evidence produced corroboration of robbery or of knowledge of weapon—Misdirection—Penal Code ss.34, 302, 457.

The appellant was convicted for murder, which was said to have been committed in pursuance of a design to rob by four conspirators and during which robbery the deceased was fatally stabbed by one of four conspirators. The person who had done the stabbing was not apprehended. The appellant admitted participating in the robbery, but denied knowledge of possession of a deadly weapon by one of the conspirators or of any design to cause injury. The evidence of one of the conspirators apprehended was that the appellant produced housebreaking paraphernalia and a knife from the back of his car and handed the knife to the person who had done the stabbing. This was stated to have taken place just before the entry into the deceased's shop. It was also proved that a watch found on the premises of the robbery was the property of the appellant. On this evidence the trial judge stated in his direction to the jury. "The finding of the wrist watch at the scene of the crime, if you are satisfied beyond reasonable doubt to be the property of the accused and that he was wearing it that morning is in my mind independent corroborative evidence and is a matter for your consideration as a question of fact."

Held: this amounted to a misdirection because the crucial point in the whole case was the state of knowledge of the appellant that among the house-breaking paraphernalia there was a knife. It was on that point that corroboration of the evidence was necessary if the appellant was to be implicated and it was wrong to suggest that such corroboration was to be found in the finding of the watch.

COURT OF APPEAL (CRIMINAL).

Richard Talalla for the appellant.

Harun Mahmud Hashim (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted for murder in contravention of section 302 of the Penal Code and was sentenced to death.

Against that conviction he has now appealed.

The charge against him was that on 8th June last year at a rubber estate between Segamat and Gemas he murdered a Chinese shopkeeper Lee Pak.

At this stage it is unnecessary to recapitulate the evidence at length but, briefly, what it made out was that some time previous to 8th June the accused, a man Derani bin Leman, a man Wong Kiew and another Chinese formed a design to visit the shop of the deceased during the night, when it was known (being the end of the month) there would be a considerable amount of money in the till, and rob the contents of the shop.

In pursuance of that design the four conspirators went to the shop about half past three in the morning and when they failed to gain an entry in the normal way one of them effected an entry by removing some tiles from the roof. Some or all of the conspirators then entered and there was a struggle with the shopkeeper in the course of which he was stabbed to death by one of them.

The prosecution case was that the present appellant was the organiser and prime mover in all this; that it was the present appellant and the unknown Chinese who entered the shop; that just before the entry the present appellant had produced a bundle of housebreaking paraphernalia and a knife from the back of the car in which the conspirators had travelled to the scene and that he handed this knife to the unknown Chinese who made use of it in the subsequent struggle. And, of course, if that was the true state of affairs there was ample authority for saying, and it was for the jury to say, that by reason of section 34 of the Penal Code the appellant was guilty of murder.

It is to be observed, however, that except for one thing the prosecution case depended on the evidence of Derani and Wong Kiew, who were called as prosecution witnesses, and both these people were clearly accomplices.

Derani's evidence so far as it implicated the appellant in the offence of murder was that the appellant went to the back of the car and took